

1 SB159
2 181568-2
3 By Senators Whatley and Dial
4 RFD: Finance and Taxation Education
5 First Read: 09-FEB-17

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8 SYNOPSIS: This bill would create a separate fund in
9 the State Treasury known as the Education Retirees'
10 Trust Fund for Cost of Living Allowances. The
11 function of the Education Retirees' Trust Fund for
12 Cost of Living Allowances shall be to serve as a
13 permanent trust and as an investment account for
14 the earnings and funds received for the purpose of
15 providing education retirees with cost of living
16 allowance increases.

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18 A BILL
19 TO BE ENTITLED
20 AN ACT
21

22 To create a separate fund in the State Treasury
23 known as the Education Retirees' Trust Fund for Cost of Living
24 Allowances for the purpose of establishing a permanent trust
25 and investment account for the funds and earnings received to
26 provide education retirees with cost of living allowance
27 increases.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. The Legislature of Alabama has determined
3 that it would be advisable for the state to create an
4 irrevocable trust whereby the state may begin funding cost of
5 living allowances for Alabama retired education employees.
6 Therefore, the State and the Teachers' Retirement System Board
7 of Control are authorized and directed to create the
8 irrevocable trust to be named the "Education Retirees' Trust
9 Fund for Cost of Living Allowances," which shall be created,
10 funded, and administered in accordance with the provisions of
11 this chapter.

12 Section 2. The name of this chapter is the Education
13 Retirees' Trust Fund for Cost of Living Allowances Funding Act
14 of 2017.

15 Section 3. As used in this chapter, the following
16 words and phrases shall have the following respective
17 meanings:

18 (1) BOARD OF CONTROL. The Teachers' Retirement
19 System Board of Control.

20 (2) DEPENDENTS. The spouse and dependent children,
21 as defined by the rules and regulations of the board, of a
22 retired employee.

23 (3) EDUCATION RETIREES' TRUST FUND FOR COST OF
24 LIVING ALLOWANCES. The Education Retirees' Trust Fund for Cost
25 of Living Allowances created by the State and the Teachers'
26 Retirement System Board of Control pursuant to this chapter.

1 (4) FISCAL YEAR. The fiscal year of the state as may
2 from time to time be provided by law.

3 (5) OTHER POST-EMPLOYMENT BENEFITS or
4 POST-EMPLOYMENT BENEFITS. Non-pension benefits paid on behalf
5 of retired employees or their dependents after the employees'
6 separation from service in accordance with the relevant
7 post-employment benefit plan.

8 (6) PERMITTED INVESTMENTS. All assets and properties
9 in which the Retirement Systems of Alabama may invest as
10 permitted by law from time to time.

11 (7) RETIRED EMPLOYEE. A former employee who is a
12 participant in either the Teachers' Retirement System pursuant
13 to Chapter 25 of Title 16, as amended from time to time, and
14 satisfies the definitions of retirement and teacher, support
15 personnel, or employee under Section 16-25-1, as amended from
16 time to time.

17 (8) STATE. The State of Alabama.

18 (9) TEACHERS' RETIREMENT SYSTEM BOARD OF CONTROL.
19 The State Teachers' Retirement System Board of Control
20 established by Section 16-25-2, or its successor or assign.

21 (10) TRUSTEE. A trustee of the trust.

22 (11) TRUST. The trust to be created by the State, on
23 the one hand, as the grantor, and members of the Teachers'
24 Retirement System Board of Control, on the other hand, as
25 trustees of the trust, pursuant to this chapter.

26 Section 4. The trust created pursuant to this
27 chapter shall be evidenced by a written trust instrument, the

1 terms and conditions of which shall be determined by the board
2 creating such trust and the Governor on behalf of the state as
3 long as such terms and conditions do not conflict with this
4 chapter. The Trustees of the Education Retirees' Trust Fund
5 for Cost of Living Allowances shall be the members of the
6 Teachers' Retirement System Board of Control serving from time
7 to time. The trust shall be managed and controlled by its
8 trustees. The trustees shall serve without compensation for
9 their service as trustees, but may be reimbursed from the
10 trust for all reasonable and necessary expenses that they
11 incur in connection with their services as trustees.

12 Section 5. (a) The trust shall be under the
13 management and control of the trustees. All powers necessary
14 or otherwise advisable for the management and control of the
15 trust shall be vested solely in the trustees.

16 (b) The trustees shall have all of the powers
17 necessary to carry out and effectuate the purposes and
18 provisions of this chapter, all the power and authority
19 granted under law to the board which created the trust, and
20 all powers granted to trustees under Alabama law to the extent
21 not in conflict with this chapter, including, without limiting
22 the generality of the foregoing, the following powers:

23 (1) To adopt, alter, and repeal rules for the
24 operation and conduct of the trust's affairs and business;

25 (2) To make, enter into, and execute contracts,
26 agreements, and other instruments and to take such other
27 actions as may be necessary or otherwise advisable for the

1 management and operation of the respective trust, to
2 accomplish any purpose for which the trust was created, or to
3 exercise any power granted by this chapter;

4 (3) To enter into contracts with, to accept aid and
5 grants from, to cooperate with, and to do any and all things
6 that may be necessary or otherwise advisable in order to avail
7 the trust of the aid and cooperation of the United States of
8 America, the state, or any agency, instrumentality, or
9 political subdivision of either thereof in furtherance of the
10 purposes of this chapter;

11 (4) To appoint, employ, and contract with such
12 employees, agents, advisors, and consultants, including, but
13 not limited to, attorneys, accountants, actuaries, financial
14 experts, and such other advisors, consultants, and agents as
15 may, in the trustees' judgment, be necessary or otherwise
16 advisable and to determine and pay, from the funds of the
17 trust, the compensation of those persons; and

18 (5) To invest the funds of the trust in any
19 permitted investment.

20 (c) The expenses of making and disposing of
21 investments, such as brokerage commissions, legal expenses
22 referable to a particular transaction, transfer taxes, and
23 other customary transactional expenses with respect to a trust
24 shall be payable out of the funds of such trust.

25 Section 6. a) The sources of funding to the
26 Education Retirees' Trust Fund for Cost of Living Allowances
27 may be: (1) appropriations made by the Legislature; (2)

1 contributions by employees and retired employees; (3) employer
2 contributions; (4) investment income; (5) proceeds of any
3 gifts, grants, or contributions; (6) transfers from the
4 Teachers' Retirement System funds; and (7) all other sources
5 permitted by law.

6 (b) The agreements creating the trust shall be
7 irrevocable and the assets of the trust shall not be expended
8 or disbursed or loaned or transferred or used for any purpose
9 other than to acquire permitted investments, pay
10 administrative expenses, and provide post-employment cost of
11 living allowance benefits to or for retired employees and
12 their dependents. The Legislature shall have no authority or
13 power to appropriate the assets of the trust.

14 (c) Notwithstanding the above, as long as such
15 amendment is consistent with the legislative intent of this
16 chapter, the trustees of the trust shall have the authority to
17 amend or modify the trust: (1) if, in the opinion of counsel
18 for the trustees of the trust, it is necessary or otherwise
19 advisable to obtain any material tax advantage or avoid any
20 material adverse tax result; (2) if, in the opinion of the
21 independent accountant for the trustees of the trust, it is
22 necessary or otherwise advisable to cause the trust to be
23 considered another post-employment benefits trust in
24 accordance with generally accepted governmental accounting
25 principles, as prescribed by the Governmental Accounting
26 Standards Board or its successor; or (3) if, in response to a
27 petition of the trustees of the trust requesting that the

1 trust be amended, a court of competent jurisdiction determines
2 that such amendment is necessary or otherwise advisable to
3 accomplish one or more purposes of this chapter.

4 (d) The trust may be terminated by the board only if
5 all state plans or programs providing such post-employment
6 cost of living allowance benefits for which the trust is
7 established are repealed or terminated and there is no future
8 obligation of the state to provide such post-employment cost
9 of living allowance benefits. In such event, the remaining
10 assets of the trust shall revert to and for the credit of the
11 Teachers' Retirement System.

12 (e) All assets and income of the trust shall be
13 exempt from taxation by the state or any political subdivision
14 thereof. The assets of the trust will not be subject to the
15 claims of creditors of the state, the board, trustees, plan
16 administrators, employees, retired employees, or dependents,
17 and will not be subject to execution, attachment, garnishment,
18 the operation of bankruptcy, the insolvency laws, or other
19 process whatsoever, nor shall any assignment thereof be
20 enforceable in any court.

21 (f) The trust shall not be deemed to be invalid by
22 reason of any indefiniteness or uncertainty of the persons
23 designated as beneficiaries in the agreements creating the
24 trust, nor shall they be deemed to be invalid as violating any
25 existing law against perpetuities or against suspension of the
26 power of alienation of title to property or against trusts for
27 the purpose of the accumulation of income; but the trust may

1 continue for such a time as may be necessary to accomplish the
2 purpose for which it was created.

3 (g) The trustees shall cause the annual financial
4 statements of the trust to be prepared in accordance with
5 generally accepted accounting principles and an audit by a
6 qualified independent certified accounting firm to be
7 conducted of those financial statements of the respective
8 trust for each fiscal year in accordance with generally
9 accepted auditing standards.

10 Section 7. It is the intent of the Legislature that
11 the state and the board establish and the trustees operate the
12 trust in compliance with the Internal Revenue Code of the
13 United States of America in a manner which would allow the
14 trust to maximize investment earnings while minimizing the
15 costs to the state and its employees and other citizens of
16 providing the cost of living allowance post-employment
17 benefits. It is also the intent of the Legislature that the
18 trust be operated in a manner that satisfies the definition of
19 other post-employment benefits trusts under generally accepted
20 governmental accounting principles. The trust shall not be
21 subject to any provision of a law of the state (or any
22 subdivision thereof) which conflicts with that legislative
23 intent or would prevent or unreasonably hinder the
24 accomplishment of the purposes of this chapter.

25 Section 8. a) A trustee shall not be: (1) personally
26 liable for any liability, loss, or expense suffered by the
27 trust, unless such liability, loss, or expense arises out of

1 or results from the willful misconduct or intentional
2 wrongdoing of such trustee; (2) responsible for the adequacy
3 of the trust to meet and discharge any obligation under the
4 relevant cost of living allowance post-employment benefit
5 plan; or (3) required to take action to enforce the payment of
6 any contribution or appropriation to the trust.

7 (b) The trustees may be indemnified by the trust and
8 from funds of the trust against costs, liabilities, losses,
9 damages, and expenses, including their attorneys fees, as more
10 fully provided in the respective trust agreements, unless such
11 cost, liability, loss, damage, or expense arises out of or
12 results from the willful misconduct or intentional wrongdoing
13 of such trustee.

14 Section 9. Nothing in this chapter shall be
15 construed to define or otherwise grant any right or privilege
16 to cost of living allowance benefits or other post-employment
17 benefits to any person other than those cost of living
18 allowance benefits or other post-employment benefits, rights,
19 and privileges previously or already granted to employees and
20 retired employees and their dependents by the state's cost of
21 living allowance benefit plan or its post-employment benefit
22 plan, if any. Such rights and privileges, if any, shall be
23 governed by the terms of the state's post-employment benefit
24 plan, if any. This chapter is not intended to assure or deny
25 any existing or future employee, retired employee, any of
26 their dependents, or any other person of any right of
27 employment or entitlement to any cost of living allowance

1 benefit or other post-employment benefit or limit or otherwise
2 restrict the ability of the state to modify or eliminate any
3 existing or future cost of living allowance benefit or other
4 post-employment benefit.

5 Section 10. All personnel employed and vendors hired
6 by contract with funds available to the trust and trustees
7 under the provisions of subdivision (4) of subsection (b) of
8 Section 36-36-5 shall reflect the racial and ethnic diversity
9 of the state.

10 Section 11. This act shall become effective
11 immediately following its passage and approval by the
12 Governor, or its otherwise becoming law.